IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO.194 OF 1996

The State of Maharashtra.).. Appellant
(Org.Complainant)

Vs.

Dilip Ankush Narvekar,)
Age 30 years, R/o.Malwan,)
District - Sindhudurg.).. Respondent
(Org.Accused)

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Shri D.R.More, APP for the State.

Shri G.H.Keluskar for the Respondent.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATE : 27th JUNE, 2005

ORAL JUDGMENT : (PER R.C.CHAVAN, J)

1. The State has filed this appeal challenging acquittal of the respondent by the learned Additional Sessions Judge, Sindhudurg at Sawantwadi, for the offence of murder punishable under Section 302 of Code of Criminal Procedure.

2. Facts which led to the prosecution of accused are as under:-

. Respondent Dilip and Dipika @ Malini who loved each other married with the consent of parents of both. Malini @ Dipika was working as Nurse in Primary Health Sub-centre at Kandalgaon where she was provided with residential accommodation. Her husband used to commute from Malvan. On the evening of 9th February, 1990, presumably after an altercation, respondent-Dilip poured kerosene on Dipika @ Malini and set her on fire. Neighbours rushed and shifted Dipika to the hospital. On way to hospital, Dipika had orally told her neighbours that accused had set her on fire. It was also alleged that accused snatched her mangalsutra. The police were informed in the hospital, after the medical officer certified Dipika to be conscious and fit to make a statement, her dying declaration was recorded by P.W.14 PSI Raghoji Jadhav. She then succumbed to her injuries.

3. In course of investigation, the accused, who was arrested, agreed to produce mangalsutra, chain and chhada snatched by him. Articles were recovered in consequence of disclosure made by the accused.

Articles seized were sent to the Forensic Science Laboratory. On completion of the investigation, chargesheet was sent to the Judicial Magistrate, First Class, Malvan. The learned Magistrate, Malvan, committed the case to the Court of Sessions, Sindhudurg at Sawantwadi.

4. The learned Additional Sessions Judge framed charge of offence punishable under Section 302 of Penal Code to which accused pleaded not guilty and claimed to be tried. In course of trial, prosecution examined as many as 15 witnesses. The defence of the accused, as appearing from the cross-examination of the witnesses and statements under Section 313 of the Code of Criminal Procedure, is that of denial. He stated in his written statement that when his wife was preparing food, he heard cries from the kitchen and, therefore, rushed towards her and found his wife on fire. He poured water on her person and tried to extinguish the fire. He sent his wife to hospital with neighbouring ladies and he followed in another rickshaw. He too sustained some burn injuries and was treated. He alleged that one Ashok Acharekar had caused a false case to be filed against him in collusion with police.

5. After considering the prosecution evidence and defence, the learned Additional Sessions Judge, Sawantwadi, acquitted the accused of the charge.

Hence the present appeal by State.

6. We have heard both the learned APP and learned counsel for respondent. The learned APP submitted that the victim had not only made dying declaration pointing to complicity of the respondent before a police officer in presence of a doctor, but also in presence of several others before she reached the hospital. The learned APP submitted that there was absolutely no reason for the Trial Court to discard this evidence and to hold the charges as not proved.

7. There is no dispute about the fact that the respondent and Dipika had love affair which culminated in their marriage but which, according to P.W.7 Kumudini, was disliked by villagers of Kandalgaon. There is nothing on record except the dying declaration to show that there was any strain in their relationship. In this context, the incident dated 9th February, 1990 would have to be looked into. Since the incident took place in the house of respondent

where he and Dipika alone were staying, obviously there was no eye witness. Therefore, case rests solely on the version of Dipika in her several declarations about the incident.

8. We have gone through the entire evidence with the help of both the learned counsel. P.W.11-Pravin Surendra Hirlekar is an attendant who was working with Malini at the Primary Health Centre and states that the deceased Malini used to tell him that her husband used to suspect her (character) because of her talking with others. It must however be noted that this disclosure came after the event and there is no word by anyone to this effect prior to the incident.

9. P.W.3 - Surendra Hirlekar is Panch at the spot panchanama, Exhibit - 28. It seems match-sticks, a plastic can containing kerosene with a pump and also chocolate coloured glass containing 4-5 spoons of kerosene were found at the spot among other things. In cross-examination, the witness admitted that there was only one burnt match stick . Curiously he states that there was no gas or stove in the kitchen.

10. P.W.12-Radhabai Ramkrishna Pawaskar had seen

the couple just before the incident. She states that on 9th February, 1990 at about 6.00 p.m., she saw Malini going to well to fetch water. The accused went to sub-centre where Malini's quarter was situated. She states that Malini had again gone to the well to fetch water for the second time and after half an hour, she heard cries from sub-centre. Thus, till fetching water, there was no problem.

11. P.W.7-Kumudini is an important witness who was supposed to have reached the scene of offence first. She and P.W.10 Vaishali state that Jagannath (brother of P.W.1) informed her and Vaishali that one Nurse (Malini) was set on fire by Malini's husband. She states that she Vaishali and Jagannath went to Primary Health Centre and saw that the door was open. She inquired as to what had happened with the victim, whereupon the victim told her that the victim's husband had poured kerosene on her person and set her on fire. Then she claims to have ran towards Rameshwar Mandir and informed complainant Ashok and Uday Kode-P.W.2, as well as others, who rushed to the house of Malini. She and even Vaishali-P.W.10 stated that when the victim informed her that the accused had set her on fire, Vaishali was outside the room. This

is the first disclosure by deceased about cause of death. According to her, when she went to Rameshwar Mandir (about one and half kms. away according to P.W.1-Ashok), to inform the complainant, P.W.1-Ashok and Kode, it took about 25 minutes to return to the house of the accused.

12. P.W.1 Ashok Acharekar is the resident of Kandalgaon who seems to be acquainted with victim as well as her husband. He states that Kumudini Atmaram Kandalgaonkar came running from the side of Primary Health Centre and informed that Nurse i.e. Dipika had suffered burns. He stated that therefore he and one Uday Kode (P.W.2) rushed towards the sub-centre on motor-cycle. He noticed Dipika in the kitchen in severely burnt condition. Accused too was present there. He went to bring rickshaw to take Malini to the hospital. He states that Malini was then kept in rickshaw. She was saying that accused had suspicions about her and had told her not to talk to others and had therefore poured kerosene on her person and set her on fire. This is the second disclosure made by victim, not to any particular person but to all who had gathered and which was heard by P.W.12- Radhabai, P.W.6- Prabhakar Surve and P.W.13-Bhanudas Surve.

13. P.W.1-Ashok also states that he made complaint to the police about the incident which is at Exhibit -25. He states about the dying declaration recorded by Police and also claims to have shown the spot. In paragraph 4 of his cross-examination, he has given various distances.

14. It may be seen from the evidence of P.W.1 Ashok that he took active part in taking the victim to hospital, lodging report with the police, in the investigation and even inquired about the presence of medical officer in Malvan Hospital, presumably when the dying declaration of victim was recorded. This interest shown by P.W.1 in the entire investigation is indeed enigmatic. He stated in paragraph 7 of his cross-examination that till the death of victim, he was unmarried. P.W.1 Ashok admitted that two cases of assault were filed against him. P.W.1Ashok admitted that accused is B.Sc.B.Ed. and is having house in front of S.T.stand, Malvan. Accused seems to own two shops, named as "Dipika General Stores" and "Dipika Cold Drink House", after the death of Dipika @ Malini. To a suggestion whether after demise of Malini, he had arranged any debate competition in her memory at

Kandalgaon, he stated that he did not remember. He also denied the suggestion that about a month before marriage of the victim with accused, the accused had expelled him from house of Malini. P.W.1 Ashok was evasive about burn injuries of accused but P.W.15, Investigating Officer-Arjun Shinde, stated in paragraph 6 of his cross-examination that the hands of accused were burnt and hence he was referred to the Doctor and that he had obtained injury certificate of the accused.

15. Unusual interest shown by P.W.1 Ashok in the investigation, his attempt to avoid giving answers regarding injuries of the accused, his not remembering whether he had organised any competition in the memory of the victim and his being unmarried till victim's death, all speak volumes of interest of P.W.1-Ashok in the matter and possibly in the deceased, who seems to have chosen the other suitor, Dilip. When this is coupled with the distance which Kumudini is supposed to have ran to tell about the incident to P.W.1-Ashok, it would be indicative of clout of P.W.1-Ashok and the affinity of Kumudini, P.W.7, for Ashok.

16. ASI Raghoji Bhikaji Jadhav - P.W.14 stated

that he recorded dying declaration of Malini in the hospital and Dr.Sharad Vaze, P.W.9, was present to certify that Dipika (Malini) was in a position to give statement. According to him, Dipika stated that at about 6.00 p.m. on the incidental day, the accused came to her room and asked her as to why she used to talk with others. She further stated to Jadhav-P.W.14 that the accused locked the door from inside, poured kerosene on her person and set her on fire, whereupon she raised an alarm. She stated that the accused snatched mangalsutra and gold chain from her neck. Kumudini and her mother came running. Accused unchained the door, opened it and left the room. She stated that the persons who had gathered brought Malini to the hospital. Dying declaration of Malini was duly proved by Jadhav, at Exhibit-37. ASI Jadhav admitted that he had not obtained certificate in writing from doctor Vaze that Dipika was fit to make a statement. He admitted that Nurses, busy in giving treatment and 2-3 other ladies were present at the time of recording of dying declaration, which is highly objectionable. He admitted that the thumb mark on Exhibit 48 was not attested by him.

17. P.W.15 PSI Shinde was the Investigating

Officer. Apart from searching the accused and taking other steps in investigation, he also proved memorandum of disclosure made by the accused at Exhibit 54 and the resultant discovery of mangalsutra, chhada and pieces of burnt nylon sari vide panchanama Exhibit -55. P.W.4 -Rajendra Dayanand Kambli and P.W.5 Rajendra Ramchandra Bodye, who are the witnesses on the point of recovery of golden ornaments of Dipika, at the instance of accused, have turned hostile.

18. In fact, the whole story about accused having snatched away the ornaments of Dipika or having concealed them is cooked up and gives a lie to the whole prosecution story. When the accused was very much there in the room immediately after the incident, there would be no question of his snatching any ornament or getting any time to conceal them. By concocting such evidence, the investigating agency has indicated the extent to which the prosecution could go to rope the accused in the crime.

19. The review of entire evidence taken above would show that the case rests entirely on the evidence of dying declaration of Malini. There is no

motive to indicate as to why the accused should have indulged in such a ghastly act. This circumstantial evidence too is ambiguous and does not unmistakably point to complicity of the accused. The accused was very much present at the scene of offence. P.W.7-Kumudini states that accused followed the victim to hospital in another rickshaw. According to P.W.2 -Uday, P.W.10 -Vaishali, P.W.12-Radhabai, P.W.6-Prabhakar and P.W.13-Bhanudas, the victim seems to be weeping. It has also been stated by the prosecution witnesses that after demise of the accused's wife, he has started two commercial establishments named after his wife. As already observed above, there is no evidence to show that before the incident, accused had accosted his wife for her freely talking to others.

20. The learned Trial Judge has elaborately discussed the law on dying declarations. As far as dying declaration recorded by P.W.14 ASI Raghoji Jadhav is concerned, it may be seen that it had to be recorded by him as P.W.15- Arjun Shinde stated that requisitions were sent to the Executive Magistrate who did not come. Therefore, the dying declaration may not be excluded from consideration only because the

same was not recorded by a Magistrate but was recorded by the police officer. Its reliability would however have to be tested.

21. On a conspectus of evidence tendered in this case, it has to be noticed that one Jagannath, brother of P.W.1 Ashok, who was the first person to learn about the incident, has not been examined. It may be recalled that it was Jagannath who informed P.W.7 Kumudini and Jagannath's own wife P.W.10 Vaishali, P.W.1 Ashok's interest in the matter is obvious from the fact that Kumudini went all the way over a distance of about 1 and 1/2 kms. running to inform P.W.1 about the incident. The other telltale circumstances like P.W.1 being unmarried till the death of victim, his giving report to the police, some of the witnesses being his relations, associates and servants, all cast the shadow of doubt on the entire story. This doubt about tale being spun is re-inforced by an extremely doubtful and contrived piece of evidence about discovery of a gold chain and mangalsutra. When the accused was very much present at the scene of offence immediately after the incident and when he had accompanied the victim to hospital, albeit, in another rickshaw where could he have a

chance to snatch mangalsutra or chhada or to conceal it elsewhere? Further, if as is made out by prosecution that the victim was wailing that the accused had poured kerosene on her person within the hearing of all who had gathered there, there is no reason as to why the accused was not immediately arrested.

22. Considering all these things, we feel that the view taken by the learned Additional Sessions Judge, Sindhudurg at Sawantwadi, far from being perverse or improbable is the only sensible view that could be taken.

23. In view of this, the Appeal is dismissed. Bail bond, if any, furnished by the respondent shall stands cancelled.

(R.C.CHAVAN, J) (V.G.PALSHIKAR, J)